

SERGIO MARCOS MIRANDA,)	No. C 12-02483 EJD (PR)
)	
Petitioner,)	ORDER TO SHOW CAUSE
)	
vs.)	
)	
)	
TOM VIRGA, Warden,)	
)	
Respondent.)	
)	
)	

Order to Show Cause
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Petitioner filed the instant federal habeas petition on May 16, 2012.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” Id. § 2243.

B. Legal Claims

Petitioner claims the following as grounds for federal habeas relief: (1) there was insufficient evidence to support the attempted murder convictions for two of the victims; (2) the jury was improperly instructed on the “kill zone” theory of liability; and (3) Petitioner’s joint trial was rendered fundamentally unfair by the admission into evidence of prejudicial letters written by codefendant. Liberally construed, his claims are cognizable under § 2254 and merit an answer from Respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on Respondent and Respondent’s attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the court and serve on petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of

1 habeas corpus should not be issued. Respondent shall file with the answer and serve
2 on Petitioner a copy of all portions of the state trial record that have been transcribed
3 previously and that are relevant to a determination of the issues presented by the
4 petition.

5 If Petitioner wishes to respond to the answer, he shall do so by filing a
6 traverse with the Court and serving it on Respondent within **thirty (30) days** of his
7 receipt of the answer.

8 3. Respondent may file a motion to dismiss on procedural grounds in lieu
9 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
10 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall
11 file with the Court and serve on Respondent an opposition or statement of non-
12 opposition within **thirty (30) days** of receipt of the motion, and Respondent shall
13 file with the court and serve on Petitioner a reply within **fifteen (15) days** of receipt
14 of any opposition.

15 4. Petitioner is reminded that all communications with the court must be
16 served on Respondent by mailing a true copy of the document to Respondent's
17 counsel. Petitioner must also keep the Court and all parties informed of any change
18 of address.

19
20 DATED: 9/20/2012


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SERGIO MARCOS MIRANDA,

Petitioner,

v.

TIM VIRGA, Warden,

Respondent.

Case Number: CV12-02483 EJD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 9/20/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Sergio Marcos Miranda AA-4895
California Correctional Institution
P. O. Box 1902
Tehachapi, CA 93581

Dated: 9/20/2012

Richard W. Wieking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk